

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

January 12, 2006 Session

**MARY ANN BAINES v. GREGORY TODD BAINES**

**Appeal from the Circuit Court for Davidson County**  
**No. 01D2253 Carol Soloman, Judge**

---

**No. M2004-02730-COA-R3-CV - Filed March 21, 2006**

---

In this divorce proceeding, the mother of the parties' only child seeks to declare void an order of the Circuit Court of Davidson County awarding father custody of the parties' child. She contends the Juvenile Court of Wilson County had exclusive jurisdiction because a dependent and neglect proceeding had been commenced. We have determined the Juvenile Court had relinquished its jurisdiction over the child and therefore affirm the judgment of the Circuit Court.

**Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

Linda M. Anderson, Nashville, Tennessee, for the appellant, Mary Ann Baines.

Sandra Jones, Nashville, Tennessee, for the appellee, Gregory Todd Baines.

**MEMORANDUM OPINION<sup>1</sup>**

Mary Ann Baines, the mother of the child, filed this divorce action in the Circuit Court for Davidson County seeking a divorce from Gregory Todd Baines and custody of their only child. Process was served on the father to which he filed responsive pleadings seeking *inter alia* custody of their child. After commencing this action, the mother moved to Wilson County to live with her parents while the divorce was pending. While living with her parents, the mother entered a drug rehabilitation program following which her parents filed a dependency and neglect action in the Juvenile Court of Wilson County, seeking an emergency order for custody.

---

<sup>1</sup>Tenn. Ct. App. R. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

For reasons not fully explained, the dependency and neglect petition filed by the grandparents indicated the petitioners did not know where the father could be served. Although the mother and her parents knew the address of and how to contact the father, he was not given notice of the filing of the dependency and neglect petition or the emergency hearing. Moreover, he was never served with process. Following an emergency hearing, the Juvenile Court awarded temporary custody to the maternal grandparents. Shortly thereafter, the mother consented to her parents' petition, and the Juvenile Court awarded custody to her parents, all of which occurred without the father's knowledge or consent.

Being ignorant of the proceedings in the Wilson County Juvenile Court, the father pursued this action to obtain custody of their child. Prior to the final hearing in this action, the father learned of the dependency and neglect proceeding. He voluntarily intervened in that action and, following a hearing, was awarded custody of the child. At the conclusion of that hearing the Juvenile Court Judge announced he was dismissing the grandparents' petition; however, no order was entered following that hearing.

Subsequent to the Juvenile Court hearing referenced above, the mother and father voluntarily proceeded with the divorce and custody action in the Circuit Court of Davidson County, during which each of them was represented by counsel at all material times. It is significant to note that the mother participated without advising the Circuit Court of her contention that the Juvenile Court had exclusive jurisdiction over the custody issue.<sup>2</sup> Being unmindful of a potential jurisdictional issue, the Circuit Court Judge dutifully presided over this divorce and custody action to a final hearing. Following a full evidentiary hearing, in which the mother and father and their respective counsel participated, the Circuit Court granted the parties a divorce and awarded custody of the child to the father.

Within thirty days of that order being filed, the mother filed a motion to declare the order of the Circuit Court of Davidson County void, contending the Juvenile Court of Wilson County had exclusive jurisdiction pursuant to Tenn. Code Ann. § 37-1-103(a) and (c). The father opposed the motion contending the Juvenile Court had dismissed the dependency and neglect petition and awarded custody to him.

To resolve the conflicting representations of the parents, the Circuit Court, Judge Carol Soloman, corresponded with the Juvenile Court, Judge Barry Tatum. Judge Tatum provided a written reply advising that although the order had not been entered, he dismissed the dependency and neglect proceedings. In furtherance of that, Judge Tatum entered an order confirming the dismissal of the dependency and neglect petition and provided a copy of the order to the Circuit Court. In the same correspondence Judge Tatum advised that "jurisdiction over the minor child, . . . has been and

---

<sup>2</sup>The father represented to the Circuit Court that the mother had been declared unfit by the Juvenile Court, that he had been awarded custody, and that the Juvenile Court had agreed that final determination of custody was to be made by the Davidson County Circuit Court.

shall continue to be with the Eighth Circuit Court of Davidson County, Tennessee.”<sup>3</sup> After corresponding with Judge Tatum, the Circuit Court denied the mother’s motion to declare the divorce and custody order void, from which post trial order the mother appeals.<sup>4</sup>

The mother’s appeal is based upon subject matter jurisdiction, contending once the Juvenile Court attains jurisdiction in a dependent and neglect action, it retains exclusive jurisdiction pursuant to Tenn. Code Ann. § 37-1-103(a) and (c) until the child reaches the age of majority or the case is dismissed. She also contends the courts cannot confer subject matter jurisdiction on a court that does not have subject matter jurisdiction, their agreement notwithstanding. We find no merit with this contention because it fails to recognize the authority of the Juvenile Court to dismiss a dependency and neglect petition, which was done in this matter although the requisite paper work to confirm the dismissal was less than timely. Moreover, when the mother voluntarily participated in the final hearing in this matter, the focus of which was the issue of custody, she was fully aware of the fact the Juvenile Court had announced that it was dismissing the dependent and neglect petition. The fact the paper work necessary to memorialize and authenticate the dismissal had not been entered was as much her fault as it was the father’s. Finding this is not one of those cases for which we should place form over substance, or to reward a litigant for being less than candid with the Circuit Court prior to and during the final hearing, we therefore affirm the decision of the Circuit Court of Davidson County to deny her post trial motion.

The father requests that we declare the appeal frivolous. Although this appeal is perilously close to being frivolous, we decline the invitation to declare it as such.

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against appellant, Mary Ann Baines.

---

FRANK G. CLEMENT, JR., JUDGE

---

<sup>3</sup>Judge Tatum further ordered the Juvenile Court Clerk to immediately transfer the file to Davidson County Circuit Court.

<sup>4</sup>By order filed January 20, 2005, we limited the issue to whether the Circuit Court erred by denying the mother’s “Motion to Declare Parenting Plan Void and For Instructions.”